

applies); was compiled in anticipation of litigation ((d)(5) applies); or contains information about another person. Although there is no “privacy” exemption under the PA, delete any information about other persons and explain in the response letter that “information not about you” was deleted from the response. There is no PA exemption to claim and no appeal rights to be given.

(b) *Cite/imply FOIA.* (1) Individuals who cite/imply FOIA when seeking access to records about themselves will have their request processed under PA, if the records they seek are contained in a PA system of records that is retrieved by their name and personal identifier. However, if the system of records notice contains an exemption rule, the release of information will be adjudicated using both PA and FOIA, ensuring that the individual receives the maximum amount of information allowable under the Acts.

(2) Individuals who cite/imply FOIA and seek access to records about themselves that are not contained in a PA system of records that is retrieved by their name and personal identifier will have their request processed under FOIA.

(3) Individuals who cite to the FOIA, but do not seek access to records about themselves, will have their request processed under FOIA.

(c) *Cite to PA and FOIA.* Individuals who cite to both PA and FOIA and seek access to records contained in a PA system of record retrieved by their name and personal identifier, will have their request as follows:

(1) If the system of records does not cite to an exemption rule, does not contain classified information, or was not compiled in anticipation of litigation, the entire file is considered releasable under the PA. However, if the file contains information about another person, that information shall be withheld and the requester apprised that information about another individual has been deleted, since the information is not about them. Since no PA exemption exists for protecting privacy, no exemption rule can be cited and appeal rights do not have to be given.

(2) If the system of records does cite to a PA exemption rule, claim the ex-

emption and process the request under the provisions of the FOIA, ensuring the requester receives the maximum release of information allowed under the Acts.

(d) *Processing time limits.* DON activities shall normally acknowledge receipt of PA requests within 10 working days and respond within 30 working days.

#### § 701.121 Processing “routine use” disclosures.

(a) *“Routine use” disclosure.* Individuals or organizations may seek a “routine use” disclosure of information from a DON PA system of records if the system provides for such a disclosure.

(1) The request must be in writing and state that it is being made under a “routine use” established by a specific PA system of records notice. For example: “Under the ‘routine use’ provisions of PA systems notice N05880-1, Security Incident System, that allows release of information to individuals involved in base incidents, their insurance companies, and/or attorneys for the purpose of adjudicating a claim, I am seeking access to a copy of my vehicle accident report to submit a claim to my insurance company. Information needed to locate this record is as follows \* \* \*.”

(2) The individual is provided information needed to adjudicate the claim. A release authority may sign the response letter since a release of responsive information is being disclosed under a “routine use,” there is no “denial” of information (*i.e.*, PA/FOIA exemptions do not apply), and no appeal rights cited.

(3) DON activities shall retain a copy of the request and maintain a disclosure accounting of the information released. (See § 701.111.)

(b) *Failure to cite to a “routine use.”* Individuals or organizations that seek access to information contained in a DON PA system of records under PA/FOIA, but who have access under a “routine use” cited in the systems notice, shall be apprised of the “routine use” access and offered the opportunity to resubmit a “routine use” request, rather than having information denied under PA/FOIA. DON activities shall not make a “routine use” disclosure

without having a “routine use” request.

(c) *Frequent “routine use” requests.* DON activities (e.g., security and military police offices) that routinely receive requests for information for which a “routine use” has been established should offer a “routine use” request form. This will eliminate the unnecessary burden of processing requests under PA/FOIA when the limited information being sought is available under a “routine use.”

**§ 701.122 Medical records.**

(a) *Health Information Portability and Accountability Act (HIPAA).* (1) DOD Directive 6025.18 establishes policies and assigns responsibilities for implementation of the standards for privacy of individually identifiable health information established by HIPAA.

(2) DOD Directive 6025.18–R prescribes the uses and disclosures of protected health information.

(3) Detailed guidance on HIPAA compliance is available from the Bureau of Medicine and Surgery’s Web site at <http://navymedicine.med.navy.mil> and from DOD at <http://www.tricare.osd.mil/hipaa/>.

(4) In addition to responsibilities to comply with this subpart and subpart G of this part, DOD Directive 6025.18 and DOD 6025.18–R must also be complied with to the extent applicable. Although nothing in this subpart and subpart G violates DOD Directive 6025.18, compliance with this subpart and subpart G in connection with protected health information does not necessarily satisfy all requirements of DOD 6025.18–R.

(b) *Disclosure.* DON activities shall disclose medical records to the individual to whom they pertain, even if a minor, unless a judgment is made that access to such records could have an adverse effect on the mental or physical health of the individual. Normally, this determination shall be made in consultation with a medical practitioner.

(1) Deny the individual access to his/her medical and psychological records if that access could have an adverse effect on the mental or physical health of the individual. This determination normally should be made in consulta-

tion with a medical practitioner. If it is medically indicated that access could have an adverse mental or physical effect on the individual, provide the record to a medical practitioner named by the individual, along with an explanation of why access without medical supervision could be harmful to the individual. In any case, do not require the named medical practitioner to request the record for the individual.

(2) If, however, the individual refuses or fails to designate a medical practitioner, access will be refused. The refusal is not considered a denial for reporting purposes under the PA.

(c) *Access to a minor’s medical records.* DON activities may grant access to a minor’s medical records to his/her custodial parents or legal guardians, observing the following procedures:

(1) In the United States, the laws of the State where the records are located may afford special protection to certain medical records (e.g., drug and alcohol abuse treatment and psychiatric records.) Even if the records are maintained by a military medical facility, these statutes may apply.

(2) For installations located outside the United States, the custodial parent or legal guardian of a minor shall be denied access if all of the following conditions are met: the minor at the time of the treatment or consultation was 15, 16, or 17 years old; the treatment or consultation was within a program authorized by law or regulation to provide confidentiality to the minor; the minor indicated a desire that the treatment or consultation record be handled in confidence and not disclosed to a parent or guardian; and the custodial parent or legal guardian does not have the written authorization of the minor or a valid court order granting access.

(3) All members of the military services and all married persons are not considered minors regardless of age, and the parents of these individuals do not have access to their medical records without the written consent of the individual to whom the record pertains.